

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GENETIC TECHNOLOGIES LIMITED,
an Australian corporation,

Plaintiff,

v.

GENETICS & IVF INSTITUTE, INC.,
a Virginia corporation,

Defendant.

Civil No. 3:12cv724

JURY TRIAL DEMANDED

ANSWER TO COUNTERCLAIMS

Plaintiff Genetic Technologies Limited ("GTG") answers the Counterclaims [Doc. No. 6] of Defendant Genetics & IVF Institute, Inc. ("GIVF") as follows:

THE PARTIES

1. As set forth in Paragraph 1 of GIVF's Counterclaims, GTG admits that GIVF is organized and existing under the laws of Virginia and has a principal place of business located at 3015 Williams Drive, Fairfax, Virginia 22031. GTG denies all other allegations in Paragraph 1 of GIVF's Counterclaims.

2. As set forth in Paragraph 2 of GIVF's Counterclaims, GTG admits that it is an Australian corporation with a principal place of business in Victoria, Australia. GTG denies all other allegations in Paragraph 2 of GIVF's Counterclaims.

NATURE OF THE ACTION

3. As set forth in Paragraph 3 of GIVF's Counterclaims, GTG admits that these claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. GTG admits that GIVF seeks a declaration that U.S. Patent No. 5,612,179 ("the '179 Patent") is not infringed by GIVF's services and/or is

invalid for failure to comply with one or more provisions of Title 35 of the United States Code, including 35 U.S.C. § 101 *et seq.* GTG denies all other allegations in Paragraph 3 of GIVF's Counterclaims.

JURISDICTION AND VENUE

4. Paragraph 4 of GIVF's Counterclaims contains conclusions of law to which no response is required. GTG, however, does not contest that the United States District Court for the Eastern District of Virginia has subject matter jurisdiction and original jurisdiction over GIVF's Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. GTG denies all other allegations in Paragraph 4 of GIVF's Counterclaims.

5. Paragraph 5 of GIVF's Counterclaims contains conclusions of law to which no response is required. GTG, however, does not contest that the United States District Court for the Eastern District of Virginia has personal jurisdiction over GTG with respect to GIVF's Counterclaims in this lawsuit. GTG also admits that it filed this lawsuit in this jurisdiction. GTG denies all other allegations in Paragraph 5 of GIVF's Counterclaims.

6. Paragraph 6 of GIVF's Counterclaims contains conclusions of law to which no response is required. GTG, however, does not contest that venue for GIVF's Counterclaims is proper in the United States District Court for the Eastern District of Virginia under 28 U.S.C. §§ 1391(b), (c), and (d). GTG denies all other allegations in Paragraph 6 of GIVF's Counterclaims.

BACKGROUND

7. As set forth in Paragraph 7 of GIVF's Counterclaims, GTG admits that the '179 Patent is titled "Intron Sequence Analysis Method for Detection of Adjacent and Remote Locus Alleles as Haplotypes" and it issued on March 18, 1997.

8. As set forth in Paragraph 8 of GIVF's Counterclaims, GTG admits that the '179 Patent is owned by GTG.

9. As set forth in Paragraph 9 of GIVF's Counterclaims, GTG admits that the '179 Patent expired on March 9, 2010.

10. As set forth in Paragraph 10 of GIVF's Counterclaims, GTG admits that GIVF provides preimplantation genetic diagnosis. GTG denies all other allegations not specifically admitted in Paragraph 10 of GIVF's Counterclaims.

COUNT I
(Declaration of Invalidity of the '179 Patent)

11. GTG incorporates by reference its responses to Paragraphs 1 through 10 of GIVF's Counterclaims as though fully set forth herein.

12. GTG denies all allegations of Paragraph 12 of GIVF's Counterclaims.

13. GTG admits that it brought a claim for infringement of the '179 Patent against GIVF. GTG denies all other allegations in Paragraph 13 of GIVF's Counterclaims.

14. GTG denies all allegations of Paragraph 14 of GIVF's Counterclaims.

COUNT II
(Declaration of Noninfringement of the '179 Patent)

15. GTG incorporates by reference its responses to Paragraphs 1 through 14 of GIVF's Counterclaims as though fully set forth herein.

16. GTG denies all allegations of Paragraph 16 of GIVF's Counterclaims.

17. GTG denies all allegations of Paragraph 17 of GIVF's Counterclaims.

18. GTG admits that it brought a claim for infringement of the '179 Patent against GIVF. GTG denies all other allegations in Paragraph 18 of GIVF's Counterclaims.

19. GTG denies all allegations of Paragraph 19 of GIVF's Counterclaims.

PRAYER FOR RELIEF

WHEREFORE, GTG denies that GIVF is entitled to any relief whatsoever, and GTG prays that the Court grant GTG the following relief:

A. Judgment that one or more claims of the '179 Patent has been directly infringed, either literally, and/or under the doctrine of equivalents, by GIVF;

B. Judgment that GIVF account for and pay to GTG all damages to and costs incurred by GTG because of GIVF's infringing activities and other conduct complained of herein in an amount not less than a reasonable royalty;

C. That GTG be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendant's infringing activities and other conduct complained of herein; and

D. That GTG be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

GTG hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable.

Dated: November 28, 2012

Respectfully submitted,

/s/ Paul Nyffeler

Maya M. Eckstein

meckstein@hunton.com

Paul Nyffeler

pnyffeler@hunton.com

HUNTON & WILLIAMS LLP

951 East Byrd Street, East Tower

Richmond, Virginia 23219

(804) 788-8788

(804) 788-8218 (facsimile)

Counsel for Plaintiff

Robert R. Brunelli

rbrunelli@sheridanross.com

Todd P. Blakely

tblakely@sheridanross.com

Benjamin B. Lieb

blieb@sheridanross.com

SHERIDAN ROSS PC

1560 Broadway, Suite 1200

Denver, CO 80202

(303) 863-9700

(303) 863-0223 (facsimile)

litigation@sheridanross.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the ANSWER TO COUNTERCLAIMS was filed via ECF and a copy was served via email to the following:

Date: November 28, 2012

Barbara S. Wahl
wahl.barbara@arentfox.com
Janine A. Carlan
carlan.janine@arentfox.com
Bradford Chase Frese
frese.bradford@arentfox.com

ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Counsel for Defendant Genetics & IVF Institute, Inc.

Dated: November 28, 2012

s/ Paul Nyffeler
Paul Nyffeler
HUNTON & WILLIAMS LLP
951 East Byrd Street, East Tower
Richmond, Virginia 23219
(804) 788-8788
(804) 788-8218 (facsimile)

Counsel for Plaintiff